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## RULING IN BANKRUPTCY

### Judge Estee Rules on Important Question.

### DECIDES HE HAS JURISDICTION

### Federal Court Has More Power in Bankruptcy Matters Than Territorial Courts.

Judge Estee in a lengthy opinion given yesterday morning in the case of Paul Voeller, decided several very important points in bankruptcy law. The suit brought by creditors of Voeller to have him adjudged a bankrupt was contested on the ground that he was not within the jurisdiction of the court, but Judge Estee held that the fact that the debtor has property within the Territory was sufficient to have him assume jurisdiction.

Among other things it transpired that J. J. Byrne, of this city, had claimed a preference by virtue of an execution issued in the Circuit Court, and to prevent the sale of the property to satisfy the judgment, a restraining order had been issued by High Sheriff Brown. Regarding the question of jurisdiction, the court holds that the pleadings show Paul J. Voeller to have been a resident of the Territory within the past six months, and that he now has property within the Territory. Continuing, the court says:

But conceding that the petitioning creditors have failed to show that Voeller had a domicile within this territorial jurisdiction for the six months preceding the filing of the petition yet it clearly appears that he has property within this jurisdiction and subject to the jurisdiction of the court; to wit, certain real estate set forth in the schedule attached to the petition and estimated to be of the value of some \$2,000. This would, independently of the provision of domicile, or residence, bring him within the purview of the bankruptcy jurisdiction of this court.

The essential facts which give a court jurisdiction of bankruptcy proceedings appearing affirmatively and distinctly in this proceeding, I am therefore of opinion that unless some other reasons are given why Voeller should not be adjudged a bankrupt, the petitioning creditors are entitled to an order adjudging him such. Second—Upon the second objection raised by counsel to the jurisdiction of this court, namely, its power to issue the restraining order to the High Sheriff of the Territory—it is clear that the court was fully within its jurisdictional powers when it issued said order, and it is not true that the Territorial Courts and the District Courts of the United States have concurrent or co-ordinate jurisdiction in bankruptcy proceedings.

"When the bankruptcy law cannot be properly administered by the court having jurisdiction, in consequence of the interference of a State court and its determination to adjudicate upon the rights of the parties and property in the bankruptcy court, the latter ought not to hesitate to assert its authority in this matter the courts of the United States and the courts of the States are not of co-ordinate authority, but the Federal court is superior." In re Miller, Fed. Cases No. 9, 551.

It would seem quite unnecessary to state, were it not for the point raised by counsel's brief, that the United States District Courts are made courts of bankruptcy, and "are invested with such jurisdiction in law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings in vacation, in chambers and during their respective term."

Section 1, subdivision 2, and section 2 of the Bankruptcy Act of 1898. And are given jurisdiction "to appoint receivers and marshals, upon application of parties in interest, to take charge of the property of bankrupts after the filing of the petition and until it is dismissed or the trustee is qualified." Section 2, subdivision 3 of said act.

And in addition to the jurisdictional powers, specifically enumerated, it is further provided that this court shall have "power to make such orders, issue such process and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this Act." Section 2, subdivision 15. Indeed, it has been held that a bankruptcy proceeding is in the nature of a proceeding in rem; the acquisition of jurisdiction is based upon the taking possession by the court of the debtor's whole property and effects, and upon its adjudication as to his status. Hence the Federal Court in which the bankruptcy proceedings are commenced has jurisdiction of the debtor's whole estate, wherever situated. Markinson vs. Henry, Fed. Cases No. 9698.

As regards the rights of creditors the court quotes from numerous decisions to show that no one may have a preferred claim in a bankruptcy proceeding, and that judgments obtained within four months prior to the bankruptcy proceedings are void. The court says:

"The decisions construing this section are clearly to the effect that it was the intention of Congress by the aforesaid section to prevent any creditor of an insolvent debtor from obtaining any advantage over other creditors by legal proceedings during a period of four months prior to the filing of a petition in bankruptcy, whether voluntary or involuntary, and that all such liens were dissolved by the adjudication."

"The province of the court is to marshal the assets of the bankrupt so that there may be a proper administration upon his estate, and also that there may be a fair and just distribution thereof to his creditors entitled there-

to; and in so marshaling the assets of said estate, the court has full power to restrain any State or Territorial court or officer from disposing of any of said assets until the adjudication by the United States Court of the debtor as a bankrupt or the dismissal of the petition.

"The provisions of the Bankruptcy Act of 1898, and which Act was in force prior to the passage of the Act of 1898, are practically the same as the latter Act so far as the jurisdiction of the court of bankruptcy is concerned; and there are numerous cases to be found where the United States courts are sustained in their exercise of the power to restrain all proceedings in State courts affecting the disposition or sale of the property of a debtor pending the decision of the District Court upon the question of his bankruptcy. This is done so that the rights of all parties may be preserved until the proper court can administer upon the estate of the bankrupt or dismiss the petition as the facts upon the hearing may disclose to be necessary."

In conclusion, Judge Estee summarizes his findings as follows:

I am therefore of opinion:

1. That the judgment creditor has not shown such proof of a change of domicile by the debtor as to prevent this court from assuming that the domicile of origin still exists.
2. Assuming that the domicile of origin no longer exists, yet it is clear that the debtor has property within the Territorial jurisdiction of the court, which fact is sufficient to enable this court to assume jurisdiction, as a bankruptcy proceeding is a proceeding in rem, and this court has jurisdiction of the situs.
3. It is the order of this court that the prayer of the petition be granted and the said Paul J. Voeller be adjudged a bankrupt.
4. That the restraining order heretofore issued in this case was properly issued, and that said A. M. Brown, High Sheriff of the Territory of Hawaii, is directed to turn over to the United States Marshal all property in his possession or under his control belonging to the said Paul J. Voeller.

ESTEE, Judge.  
Dated January 6, 1902.

## PADRES PARADE MANILA STREETS

### Over Three Hundred Chant Their Solemn Litany in the Walled City.

The procession which had been previously announced to take place from the Cathedral Thursday at dusk, brought forth an immense concourse of spectators, who began to arrive at the Cathedral as early as 4:30 p. m.

At 5:30 p. m. the cross-bearer issued from the door of the Cathedral, supported by two acolytes, each carrying a censor, to which, when they remembered to do so, they gave an occasional swing. They turned into Calle Palasio, and after them came a throng of men and women, and, as they passed, in the dim far distance, the ear caught the faint sounds of men's voices raised in unison, tuning a chant. As the procession progressed this sound increased in volume until, as the group of leading priests passed, the words of the litany could be distinctly heard when the refrain was taken up, and rippled back and forth down the whole line of the procession—"Santo Cristo, Salve Nos."

The procession passed, and gradually the chanting died away, even as it had begun, in the dim far distance.

It is estimated that there were over three hundred priests, besides very many friars of various orders, participating in this procession, and the effect of their combined voices rising, swelling and falling, and finally dying away, was weird in the extreme.

The final procession of the fiesta took place last night, and was as gorgeous as that of Thursday night was sombre.—Manila Times.



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